

Exhibit Y Cause #

16 Am. Jur. 2d Constitutional Law § 68

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Constitutional Law

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IV. Construction of Constitutions

A. General Rules of Construction

§ 68. Irreconcilable conflict between separate provisions of constitution

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Constitutional Law  596

A conflict between constitutional amendments exists if one provision authorizes what the other forbids or forbids what the other authorizes.¹ Only where an irreconcilable conflict exists between different provisions of the constitution, the office of judicial construction is to determine which will prevail.² Distinct provisions of the constitution are repugnant to each other in such a way as to be irreconcilable only when they are related to the same subject, are adopted for the same purposes, and cannot be enforced without material and substantial conflict.³ However, where two constitutional amendments are not irreconcilably inconsistent, both must stand, even if there is some tension between them.⁴

Observation:

The test for determining whether a conflict between constitutional amendments exists is whether one amendment prohibits what the other permits or vice versa.⁵

A constitutional provision does not necessarily trigger heightened scrutiny merely because its language is detailed or otherwise specific.⁶ If there is a conflict between a general and a special or specific provision in a constitution, the special or specific provision must prevail in respect of its subject matter,⁷ but the general provision will be left to control in cases where the special or specific provision does not apply.⁸ Although the terms of an organic provision will not be strained to imply limitation upon the lawmaking power of the legislature where express and definite limitations are imposed by one section of organic law, amendments of other sections of the constitution will not be construed to remove such fixed limitations further than the terms of the amendment fairly require.⁹

If there is a real inconsistency between a constitutional amendment and an antecedent provision, the amendment must prevail because it is the latest expression of the will of the people.¹⁰ In such a case, there is no room for the application of the rule as to harmonizing inconsistent provisions.¹¹ If it covers the same subject as was covered by a previously existing constitutional provision, thereby indicating an intent to substitute it in lieu of the original, the doctrine of implied repeal, though not favored,¹² will be applied and the original provision deemed superseded.¹³

When two amendments are adopted on the same day, they should, if possible, be so construed that effect may be given to both, but where a section of the constitution is amended at the same time by two different amendments, and the amendments adopted are directly in conflict, and it is impossible to determine which should stand as a part of the constitution or to reconcile the same, then they must both fail.¹⁴

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Footnotes

- 1 Bolt v. Arapahoe County School Dist. No. Six, 898 P.2d 525, 101 Ed. Law Rep. 1185 (Colo. 1995).
- 2 City and County of San Francisco v. County of San Mateo, 10 Cal. 4th 554, 41 Cal. Rptr. 2d 888, 896 P.2d 181 (1995).
- 3 Meyers v. Flournoy, 209 La. 812, 25 So. 2d 601 (1946).
- 4 StopAquila.org v. City of Peculiar, 208 S.W.3d 895 (Mo. 2006).
- 5 StopAquila.org v. City of Peculiar, 208 S.W.3d 895 (Mo. 2006).
- 6 Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), as modified on denial of reh'g, (Oct. 11, 1994).
- 7 Fruge v. Board of Trustees of Louisiana State Employees' Retirement System, 6 So. 3d 124 (La. 2008); Jubelirer v. Rendell, 598 Pa. 16, 953 A.2d 514 (2008).
- 8 McDonald v. Schnipke, 380 Mich. 14, 155 N.W.2d 169 (1968).
- 9 Gray v. Golden, 89 So. 2d 785 (Fla. 1956).
- 10 Spradlin v. City of Fulton, 924 S.W.2d 259 (Mo. 1996); Denish v. Johnson, 1996-NMSC-005, 121 N.M. 280, 910 P.2d 914, 106 Ed. Law Rep. 1349 (1996).
- 11 State ex rel. Lein v. Sathre, 113 N.W.2d 679 (N.D. 1962).
- 12 Parrott & Co. v. City and County of San Francisco, 131 Cal. App. 2d 332, 280 P.2d 881 (1st Dist. 1955).
- 13 Johnston v. Hicks, 225 Ga. 576, 170 S.E.2d 410 (1969).
- 14 Opinion to the Governor, 78 R.I. 144, 80 A.2d 165 (1951).